Re Lim Cheng Pow; ex parte Maybank Investment Bank Bhd & Anor

HIGH COURT (KUALA LUMPUR) — IN VOLUNTARY PRESUPPOSITION NO WA-29VA-2–02 OF 2020
NADZARIN WOK NORDIN JC
12 MAY 2020

Insolvency — Bankruptcy — Voluntary arrangement — Debtor filed for interim order for voluntary arrangement to creditors — Applicants applied to intervene — Whether applicants entitled to intervene debtor's application — Whether debtor failed to make full and frank disclosure of debt in debtor petition — Whether nominee failed to comply with prescribed times in calling for debtor's proposal and meeting as in Insolvency (Voluntary Arrangement) Rules 2017 — Whether debtor entitled to make transfer of ownership of a creditor's asset by a debtor's voluntary arrangement — Whether debtor's action depriving applicants' asset and rights to full payment from realisation of lands charged as security for notes — Insolvency Act 1967 ss 2C(2)(b), 2D, 2E and 91 — Insolvency Rules 2017 r 284 — Rules of Court 2012 O 15 r 6(2)(b)

This was an ex parte summons in chambers application filed by the applicant, Lim Cheng Pow ('the debtor') on the 13 February 2020 pursuant to s 2C(2)(b) of the Insolvency Act 1967 for an interim order for a voluntary arrangement to his creditors at any time before he was adjudged bankrupt, of which the court had granted order in terms on 14 February 2020 ('the ex parte VA order'). Maybank Investment Bank Bhd as the first applicant and Malayan Banking Bhd as the second applicant ('the applicants') then applied by way of a summons in chambers in encl 5 to intervene in the proceedings ('the applicants' application') in accordance with O 15 r 6(2)(b) of the Rules of Court 2012 ('the ROC'), r 284 of the Insolvency Rules 2017, ss 2D, 2E and 91 of the Insolvency Act 1967 ('the IA 1967') and/or O 92 r 4 of the ROC. The applicants was granted leave to intervene in the proceedings and be made parties thereto and for the title of the action to be amended to include the applicants as creditors and no meeting of creditors shall be held pursuant to s 21 of the IA 1967 pending the disposal of the application of the applicants' application on an ex parte basis. The counsel for the debtor and the counsel for the nominee had confirmed that they had no objections to the applicants intervening in the proceedings but were contesting the interim stay order. The applicants submitted that in the MIBB's bankruptcy action, the debtor had always maintained that he was able to pay his debts. It was contended by the applicants, a deliberate failure and non-disclosure on the part of the debtor in disclosing to the court when the voluntary agreement ('VA application') was made, all the material facts concerning his debtor's petition and the SAHC

bankruptcy appeals, in particular the setting aside of RO appeal, which were still pending before the Court of Appeal as well as deliberately failing to disclose to the court the various proceedings which he had filed to thwart MIBB's bankruptcy action prior to the filing of the VA application since the creditor's petition was filed on 21 July 2015, more than five years ago. The applicants further submitted that the voluntary arrangement proceedings were now spent and ought to be set aside as the proceedings for a voluntary arrangement ('the VA proceedings') as the nominee failed to call for a meeting within the prescribed statutory time r 12 of the Insolvency (Voluntary Arrangement) Rules 2017 since the debtor's proposal which was prepared on 17 March 2020 ('the debtor's proposal') and the nominee ought to have called the creditors' meeting under s 2I of the IA 1967 within 14 days from 17 March 2020 as required by s 12 of the IVAR, and any decision made at such creditors' meetings was liable to be set aside, *in limine*, as any decision made or voluntary arrangement approved at such defective meeting, would be void. It was further submitted that the proposal was clearly not genuine or sensible as the notes were owned by the applicants and were not security for any debt owing by the debtor. The applicants argued that it was a ridiculous proposal for the debtor to bring in a friendly company to compel the applicants, as creditors, to sell their assets at a discounted price as there could not be a transfer of ownership of a creditor's asset by a debtor's voluntary arrangement. The applicants submitted that the entire exercise under the voluntary arrangement proceedings filed by the debtor was to ensure that the applicants lost control and possession of their notes, and that the motive of the debtor was clear, that was to force the applicants to relinquish the notes and compromising the applicants' rights and positions in the litigation involving the applicants, the debtor and/or his nominee companies.

Held, allowing application in encl 5 in part with costs of RM30,000 paid by the debtor to the applicants:

(1) The court found that there was an element of a lack of bona fides on the part of the debtor in having to failed to disclose the full facts in its application under s 2 of the IA pertaining to, amongst others, and in particular to satisfactorily explain the debtors petition in the SAHC as well as the proceedings arising thereto and the SAHC bankruptcy appeals, in particular the setting aside of receiving order appeal, which were still pending before the Court of Appeal. The debtor failed to explain the salient facts concerning the ongoing litigation actions between the debtor and the applicants and that the history of litigation would have been a relevant factor in the current proceedings for which the court should have been made known of. In the circumstances, the debtor could not seek the aid of the court where there was a failure to make a full and frank disclosure (see para 90).

(2) The court found that there was a failure by the nominee to comply with r 11 of the Insolvency (Voluntary Arrangement) Rules 2017 in that the debtor's proposal must be called upon within 21 days after receiving the statement of affairs from the debtor. There must be meticulous compliance with the law more so when the interim order under s 2 of the Insolvency Act 1967 was only valid for a very limited time of 90 days from the date the order was made and such period shall not be extended pursuant to s 2D(3) of the IA 1967. The court agreed with the applicants' counsel that the CA proceedings herein was now spent as the nominee has failed to call for a meeting within the prescribed statutory time (see paras 93–94).

(3) It was found that the notes of which was being proposed to be purchased by the third party belonged not to the debtor but to the applicant. The said notes were the assets of the applicants. The court of the view that Infragem Sdn Bhd, the proposed 'white knight' in the debtor's VA, who would purchase the redeemable convertible secured notes issued by one Gula Perak Bhd ('the notes') and owned by the applicants, at a discounted price, and that the notes would then be transferred to the other creditors of the debtor as full and final settlement of the debtor's debts (see paras 98–99).

(4) The court found that the proposal prepared by the nominee or debtor, the debtor was using the VA provisions to force the applicants to sell their notes to the Infragem Sdn Bhd at a discounted price, possibly depriving the applicants of their asset and their rights to full payment from the realisation of the lands charged as security for the notes. It was not merely a case of the proposal not being viable, feasible, workable or intelligible but it was inherently flawed, defective and misguided as the debtor or nominee could not force or compel the applicants to transfer or sell the notes which were owned by the applicants as it was incomprehensible to allow the debtor a right to make a proposal for a third party to purchase the notes that did not belong to the debtor but which instead belongs to the applicants. Section 2 of the IA could not be intended to deprive the applicants as a creditor of the debtor of its property. The effect of the proposal would compromise the applicants' rights and positions in the other litigation between the applicants and the debtor. In the interest of justice it would be more practical and logical not to allow the meeting as the issues with regards the objections to the proposal had already been laid before the court vide encl 5 (see paras 102–104).

[Bahasa Malaysia summary

Ini adalah saman ex parte dalam permohonan dalam kamar yang difailkan oleh pemohon, Lim Cheng Pow ('penghutang') pada 13 Februari 2020 berdasarkan s 2C(2)(b) Akta Insolvensi 1967 untuk perintah sementara untuk pengaturan secara sukarela kepada pemiutangnya pada bila-bila masa sebelum dia digelar

bankrup, yang mana mahkamah telah memberikan perintah tersebut pada 14 Februari 2020 ('perintah ex parte VA'). Maybank Investment Bank Bhd sebagai pemohon pertama dan Malayan Banking Bhd sebagai pemohon kedua ('pemohon-pemohon') kemudiannya memohon melalui saman dalam kamar dalam lampiran 5 untuk campur tangan dalam prosiding ('permohonan pemohon-pemohon') berdasarkan dengan O 15 r 6(2)(b) Kaedah-Kaedah Mahkamah 2012 ('Kaedah tersebut'), peraturan 284 dari Peraturan Insolvensi 2017, ss 2D, 2E dan 91 Akta Insolvensi 1967 ('Akta tersebut') dan/atau A 92 k 4 daripada Kaedah tersebut. Pemohon diberikan kebenaran untuk campur tangan dalam prosiding dan dijadikan pihak terhadap prosiding tersebut dan tajuk tindakan akan dipinda untuk memasukkan pemohon sebagai pemiutang dan tidak ada mesyuarat pemiutang yang akan diadakan sesuai dengan s 21 Akta tersebut sementara menunggu pelupusan permohonan pemohon-pemohon secara ex parte. Peguam untuk penghutang dan peguam untuk penama telah mengesahkan bahawa mereka tidak membantah dengan pemohon-pemohon untuk campur tangan dalam prosiding tetapi menentang perintah penangguhan sementara. Pemohon-pemohon mengemukakan bahawa dalam tindakan kebankrapan MIBB, penghutang sentiasa menyatakan bahawa dia mampu membayar hutangnya. Perkara itu ditentang oleh pemohon, kegagalan yang disengajakan dan tidak diungkapkan pihak penghutang dalam hujah kepada mahkamah ketika perjanjian sukarela ('aplikasi VA') dibuat, semua fakta penting mengenai petisyen penghutang dan rayuan kebangkrapan SAHC, khususnya pengecualian rayuan RO, yang masih belum selesai di Mahkamah Rayuan dan juga dengan sengaja gagal mengungkapkan kepada mahkamah berbagai prosising yang telah difailkannya untuk menggagalkan tindakan kebangkrapan MIBB sebelum pengfailan permohonan VA sejak petisyen pemiutang difailkan pada 21 Julai 2015, lebih dari lima tahun yang lalu. Para pemohon seterusnya mengemukakan bahawa prosiding pengaturan sukarela sekarang telah selesai dan harus diketepikan sebagai prosiding pengaturan sukarela ('prosiding VA') kerana penama gagal memanggil satu mesyuarat dalam waktu yang diperuntukan di bawah undang-undang melalui peraturan 12 dari Peraturan Insolvensi (Pengaturan Sukarela) 2017 sejak cadangan penghutang yang disediakan pada 17 Mac 2020 ('cadangan penghutang') dan penama seharusnya memanggil mesyuarat pemiutang di bawah s 2I dalam 14 hari dari 17 Mac 2020 sebagaimana yang diperlukan oleh s 12 dari IVAR, dan setiap keputusan yang dibuat dalam mesyuarat pemiutang tersebut dapat diketepikan, *in limine*, kerana setiap keputusan yang dibuat atau pengaturan sukarela yang disetujui pada pertemuan yang tidak sah tersebut, akan terbatal. Selanjutnya ia telah dikemukakan bahawa cadangan itu jelas tidak benar atau masuk akal kerana *notes* tersebut dimiliki oleh pemohon dan tidak menjamin sebarang hutang yang harus dibayar oleh penghutang. Pemohon berpendapat bahawa ia adalah cadangan yang tidak masuk akal bagi penghutang untuk membawa syarikat yang menpunyai hubungan baik untuk memaksa pemohon, sebagai pemiutang, untuk menjual aset mereka dengan harga yang

telah diberi diskaun kerana tidak mungkin berlaku pemindahan hak milik aset pemiutang oleh peminjam pengaturan sukarela. Pemohon mengemukakan bahawa keseluruhan proses di bawah prosiding pengaturan sukarela yang diajukan oleh penghutang adalah untuk memastikan bahawa pemohon kehilangan kawalan dan memiliki *notes* mereka, dan motif penghutang adalah jelas, iaitu untuk memaksa pemohon melepaskan *notes* tersebut dan menjejaskan hak dan kedudukan pemohon dalam proses pengadilan yang melibatkan pemohon, penghutang dan/atau syarikat penamaannya.

Diputuskan, membenarkan permohonan dalam lampiran 5 dengan kos sebanyak RM30,000 dibayar oleh penghutang kepada pemohon-pemohon:

(1) Mahkamah menemukan bahawa ada unsur kekurangan bona fide dari pihak penghutang kerana gagal mengemukakan fakta lengkap dalam permohonannya di bawah s 2 Akta tersebut yang berkaitan, antara lain, dan khususnya menjelaskan petisyen penghutang di SAHC serta prosiding yang timbul dan rayuan kebankrapan SAHC, khususnya pengesahan untuk menerima rayuan perintah, yang masih belum selesai di Mahkamah Rayuan. Penghutang gagal menjelaskan fakta-fakta penting mengenai tindakan litigasi yang sedang berlangsung antara penghutang dan pemohon dan bahawa sejarah litigasi akan menjadi faktor yang relevan dalam proses semasa yang seharusnya diberitahu kepada mahkamah. Dalam keadaan seperti itu, penghutang tidak dapat meminta pertolongan mahkamah di mana terdapat kegagalan untuk membuat pendedahan penuh dan terus terang (lihat perenggan 90).

(2) Mahkamah mendapati bahawa terdapat kegagalan oleh penama untuk mematuhi peraturan 11 Peraturan Insolvensi (Pengaturan Sukarela) 2017 di mana cadangan penghutang harus dipanggil dalam waktu 21 hari setelah menerima pernyataan urusan dari penghutang. Harus ada kepatuhan yang teliti terhadap undang-undang lebih-lebih lagi apabila perintah interim di bawah s 2 Akta Insolvensi 1967 hanya berlaku untuk waktu yang sangat terhad iaitu 90 hari dari tarikh perintah itu dibuat dan tempoh tersebut tidak akan ditambah berdasarkan s 2D(3) Akta tersebut. Mahkamah bersetuju dengan peguam pemohon bahawa prosiding CA di sini telah selesai kerana penama telah gagal untuk mengadakan mesyuarat dalam waktu yang ditetapkan (lihat perenggan 93–94).

(3) Didapati bahawa *notes* yang dicadangkan untuk dibeli oleh pihak ketiga bukan milik penghutang tetapi pemohon. *Notes* tersebut adalah merupakan aset pemohon. Mahkamah berpendapat bahawa Infragem Sdn Bhd, 'penyelamat' yang dicadangkan dalam VA penghutang, yang akan membeli *notes* bercagar boleh ditukar dan ditebus yang dikeluarkan oleh Gula Perak Bhd ('notes') dan dimiliki oleh pemohon-pemohon, dengan potongan harga, dan bahawa *notes* kemudian akan dipindahkan kepada pemiutang penhutang yang lain sebagai penyelesaian penuh dan

terakhir hutang penghutang (lihat perenggan 98–99)

(4) Pengadilan menemukan bahawa proposal yang disediakan oleh penama atau penhutang, penghutang menggunakan peruntukan VA untuk memaksa pemohon menjual *notes* mereka kepada Infragem Sdn Bhd dengan harga diskaun, yang mungkin menidakkan pemohon dari aset dan hak untuk pembayaran penuh dari realisasi tanah yang digadai yang dikenakan sebagai jaminan kepada *notes* tersebut. Bukan hanya sekadar cadangan yang tidak dapat dilaksanakan, atau difahami tetapi merupakan cacat, gagal dan salah arah kerana penghutang atau penama tidak boleh memaksa atau memaksa pemohon untuk memindahkan atau menjual *notes* yang dimiliki oleh pemohon kerana tidak masuk akal untuk membenarkan penghutang berhak membuat cadangan untuk pihak ketiga untuk membeli *notes* yang bukan milik penghutang tetapi yang menjadi milik pemohon. Seksyen 2 Akta tersebut tidak dapat dimaksudkan untuk melucutkan hak milik pemohon sebagai pemiutang penghutang. Kesan daripada cadangan tersebut akan menjejaskan hak dan kedudukan pemohon dalam proses perbicaraan lain antara pemohon dan penghutang. Demi kepentingan keadilan, ia akan lebih praktikal dan logik untuk tidak mengizinkan mesyuarat itu kerana permasalahan-permasalahan yang berkaitan dengan bantahan terhadap cadangan tersebut telah diajukan dalam mahkamah melalui lampiran 5 (lihat perenggan 102–104).]

Cases referred to

Azman bin Jufri v Medtronic Australasia Pty Ltd [2015] 6 MLJ 841; [2015] 5 CLJ 1026, CA (refd)

Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257, FC (refd)

Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd and another suit [2019] 8 MLJ 473; [2018] 10 CLJ 412, HC (refd)

PECD Bhd & Anor v AmTrustee Bhd and other appeals [2010] 5 MLJ 357, CA (refd)

Sibu Slipway Sdn Bhd v Yii Chee Ming & Ors and other appeals [2017] 1 MLJ 368, CA (folld)

Siporex Trade SA v Comdel Commodities Ltd [1986] 2 Lloyd's Rep 428, QBD (refd)

Sri Hartamas Development Sdn Bhd v MBf Finance Bhd [1990] 2 MLJ 31, HC (folld)

Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & Ors (No 2) [1993] 2 MLJ 353; [1993] 2 CLJ 677, HC (folld)

United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin [2002] 2 MLJ 385, FC (refd)

United Overseas Bank (M) Bhd v Loke Lai Ying [2003] 3 MLJ 201, CA (folld)

Legislation referred to

Bankruptcy Act 1967 (now Insolvency Act 1967)
Companies Act 1965 s 176
Courts of Judicature Act 1964 Schedule
Insolvency (Voluntary Arrangement) Rules 2017 rr 9, 11, 12, 12(1), Forms 9, 14
Insolvency Act 1967 ss 2, 2C(2)(b), 2D, 2D(2)(a), 2D(3), 2E, 2I, 2I(1), 2I(3), 2K(1)(b), 2L, 2L(2), 2L(7), 21, 25(2), 91, 91(1), 93(4)
Insolvency Rules 2017 rr 283, 284
Interpretation Acts 1948 and 1967 s 23
Rules of Court 2012 O 15 r 6(2)(b), O 92 r 4

Sin Ming Yoong (HH Ng & Denise Teoh with him) (Shook Lin & Bok) for the applicants.
Wong Rhen Yen (Adhilani Yusof with him) (Ezmeel & Co) for the debtor.
RK Sharma (Amritpal Singh with him) (Amrit & Company) for the nominee.

Nadzarin Wok Nordin JC:

INTRODUCTION

[1] There was before this court an ex parte summons in chambers application filed by the applicant, Lim Cheng Pow ('debtor') on the 13th of February 2020 pursuant to s 2C(2)(b) of the Insolvency Act 1967 for an interim order for a voluntary arrangement to his creditors at any time before he is adjudged bankrupt, of which this court had granted order in terms on 14 February 2020 ('the ex parte VA order').

[2] The court notes that on 14 February 2020, the counsel for the applicants appeared before the court to oppose the VA application. However, this court had taken the position that the applicants' counsel could not address the court at that juncture and there was no application by the applicants before the court and an interim order for the voluntary arrangement was thus granted on an ex parte basis.

[3] Thereafter on 17 March 2020 Maybank Investment Bank Bhd ('first applicant') and Malayan Banking Bhd ('second applicants') ('collectively to be referred to as the applicants') then applied by way of a summons in chambers in encl 5 herein ('applicants' application'), to, inter alia, intervene in the proceedings herein in accordance with O 15 r 6(2)(b) of the Rules of Court 2012 ('the RC'), r 284 of the Insolvency Rules 2017, ss 2D, 2E and 91 of the Insolvency Act 1967 ('the IA 1967') and/or O 92 r 4 of the RC for, inter alia, the following orders:

(a) that the applicants be granted leave to intervene in these proceedings and be made parties thereto and for the title of the action to be amended to include the applicants as creditors;

(b) that the applicants be granted leave to proceed with the application as well as to proceed and continue with the action commenced against, amongst others, the debtor, in the Kuala Lumpur High Court vide Originating Summons WA-24NCC-142–03 of 2020;

(c) that the ex parte interim order be set aside;

(d) that no meeting of creditors shall be held pursuant to s 21 of the IA 1967 pending the disposal of the application;

(e) that any fresh application and/or proceedings filed pursuant to the provisions of the IA 1967 which may be filed by the debtor must be served on the applicants prior to any hearing or case management date fixed for the same; and

(f) that the debtor do pay the costs of the application.

[4] The grounds of the application as stated in the said application and in the affidavit in support filed therein are, inter alia, as follows:

(a) the applicants are creditors of the debtor and as creditors they have an interest and should be allowed to intervene and be heard in these proceedings;

(b) premised on the judgment dated 7 October 2013 ('2013 judgment') obtained by the applicants against the debtor, the applicants on 31 March 2015 filed their respective bankruptcy actions against the debtor at the Kuala Lumpur High Court vide Bankruptcy No 29NCC-1815–03 of 2015 ('MIBB bankruptcy action');

(c) on 5 October 2015, the applicants together with three other parties had obtained judgment against the debtor in the Kuala Lumpur High Court vide Summons No 22NCC-163–06 of 2015 ('2015 judgment');

(d) the debtor had opposed the bankruptcy action filed by the second applicant but had on 14 January 2016 settled his debts under the 2013 judgment with the second applicant. The debtor continues to contest the MIBB bankruptcy action filed by the first applicant;

(e) knowing the the creditors petition in the MIBB bankruptcy action was fixed for hearing on 17 February 2020, the debtor filed his action herein and obtained the ex parte VA order which resulted in the MIBB bankruptcy action being adjourned;

(f) the debtor has deliberately omitted to disclose the various applications and appeals which he has filed against the applicants, some of which

have yet to be disposed of, and had sworn false statements regarding the same in his affidavit in support dated 13 February 2020;

(g) the filing of the VA application is for the sole purpose of stalling. The proceedings under MIBB's bankruptcy action filed by the first applicant as well as to derail the applicants recovery proceedings against him;

(h) the VA application is an abuse of the process of the court;

(i) the ex parte VA order ought to be set aside; and

(j) the applicants are also seeking leave to commence proceedings against, inter alia, the debtor in the Kuala Lumpur High Court vide Originating Summons No WA-24NCC-142–03 of 2020 as these are not proceedings against the debtor in respect of his debts.

[5] It is to be noted that the application and the proceedings thereafter were conducted during the Movement Control Order ('MCO') imposed by the government due to the Covid 19 pandemic and accordingly the matters were heard online with all the respective counsels representing the interested parties being present and involved albeit online and not physically present before me.

[6] On 27 April 2020, this court had granted an order in terms of prayers (1) ie that the applicants be granted leave to intervene in these proceedings and be made parties thereto and for the title of the action to be amended to include the applicants as creditors and (4) being that no meeting of creditors shall be held pursuant to s 2I of the IA 1967 pending the disposal of the application of the applicants' application on an ex parte basis, ie for leave of this court for the applicants to intervene in these proceedings and an interim order that no meeting shall be held pursuant to s 2I of the Insolvency Act 1967('the IA'), pending the disposal of the applicants' application (which is essentially to stay further proceedings herein) ('the interim stay order').

[7] On 30 April 2020, the counsel for the debtor and the counsel for the nominee had confirmed that they had no objections to the applicants intervening in these proceedings herein but were contesting the interim stay order.

[8] On 3 May 2020, the court appointed nominee, Baltasar bin Maskor ('nominee'), had also filed in a summons in chambers under encl 17 ('nominee's application'), pursuant to s 25(2) of the IA and s 93(4) of the IA to be read together with the Schedule of Additional Powers of the High Court of the Courts of Judicature Act 1964 and/or r 283 of the Insolvency Rules 2017 and/or s 91 of the IA and/or r 284 of the Insolvency Rules 2017 and/or O 92 r 4 of the Rules of Court 2012 and/or the inherent jurisdiction of the court for an order, inter alia, that:

(a) the nominee be given an extension of time to call and to hold the creditors meeting pursuant to r 12(1) of the Insolvency (Voluntary Arrangement) Rules 2017;

(b) the nominee be allowed to hold the said creditors meeting pursuant to r 12(1) of the Insolvency (Voluntary Arrangement) Rules 2017 during the MCO/conditional MCO;

(c) the court give such additional orders ('as per Form 14 filed') for the purpose of calling and holding the creditors meeting pursuant to r 12(1) of the Insolvency (Voluntary Arrangement) Rules 2017;

(d) any irregularities be corrected by this court pursuant to s 2L(7) of the IA; and

(e) this court abridges the time as required.

[9] On 4 May 2020, this court had heard prayer (4) of the applicant's application ('to stay the creditors meeting pending the disposal of the applicants' application') on an inter partes basis, and found that there were special circumstances to maintain status quo pending the disposal of the applicant's application. The interim stay order was therefore maintained.

[10] The applicant's application was then fixed to be heard inter partes on 12 May 2020 with the respective parties filing their written submissions and submitting orally, albeit via online proceedings, before me on the said date.

BACKGROUND FACTS

[11] The applicants are creditors of the debtor who owes the first applicant the sum of RM95,538,090.20 as at 14 February 2020 under judgments dated 7 October 2013 and dated 5 October 2015, and the second applicant the sum of RM14,620,990.47 as at 14 February 2020 under the judgment dated 5 October 2015.

[12] On 7 October 2013, the first and second applicants had obtained judgment against the debtor ('the 2013 judgment'), which can be found at exh MIBB1 at pp 57–61, of the affidavit in support of the first applicant in encl 6 ('encl 6').

[13] The first and second applicants had thereafter commenced bankruptcy actions against the debtor on 31 March 2015 due to the debtor's default in payment of the judgment debt under the judgment dated 7 October 2013, of which was vigorously opposed by the debtor in both bankruptcy actions.

[14] In 2016, the debtor settled his debts under the 2013 judgment with the second applicant but has continued to contest the first applicant's bankruptcy action ('MIBB's bankruptcy action').

JUDGMENT DATED 5 OCTOBER 2015

[15] In a separate matter, on 5 October 2015, the applicants together with three other banks had obtained a judgment against the debtor in the Kuala Lumpur High Court vide Suit No 22NCC-163–06 of 2015 ('the SPA action') as can be seen in the writ and statement of claim dated 5 June 2015 and judgment dated 5 October 2015 ('the 2015 judgment') at exh MIBB4, at pp 76–119, encl 6 and Annexure 2 hereto.

[16] The said SPA action arose in respect of a sale and purchase agreement dated 5 August 2014 ('the SPA') whereby one Million Westlink Sdn Bhd ('MWSB') had agreed to purchase the redeemable convertible secured notes issued by one Gula Perak Bhd ('the notes') held by the applicants together with three other banks, for a sum of RM146,458,246.20. The debtor had guaranteed the completion of the SPA.

[17] Arising from the breach of the SPA by MWSB and of the debtor's obligation as guarantor, the High Court had granted the 2015 judgment in the SPA action against MWSB as well as against the debtor. However, such judgment has not been satisfied to date.

[18] MWSB's and the debtor's attempts/efforts to challenge/impeach the 2015 judgment were unsuccessful. See the Court of Appeal order dated 6 December 2016, and the Federal Court orders of 26 April 2017, 15 March 2018 and 28 January 2019 — exh MIBB5, at pp 120–148, encl 6. In the SPA action and the proceedings in the appellate courts, the debtor was represented by Messrs Malis & Khoo.

THE SHAH ALAM HIGH COURT EX PARTE RESTRAINING ORDER

[19] The debtor thereafter proceeded to file his debtor's petition in the Shah Alam High Court on 19 January 2016, vide Shah Alam High Court vide Bankruptcy No 29NCC-384–01 of 2016 ('the debtor's petition').

[20] On 22 January 2016, the debtor obtained a receiving order, on an ex parte basis, in the debtor's petition Shah Alam High Court ('the SAHC ex parte RO'). This SAHC ex parte RO resulted in all actions against him, including MIBB's bankruptcy action, being stayed. The debtor was represented therein by Messrs Faizul Nasir & Associates. See the debtor's petition dated 19 January 2016, the debtor's summons in chambers dated 19 January 2016 and debtor's

affidavit affirmed on 19 January 2016, the SAHC ex parte RO dated 22 January 2016 and the debtor's affidavit verifying the statement of affairs affirmed on 29 January 2016 — exh MIBB6, at pp 149–182, encl 6.

[21] On 4 March 2016, the five creditor banks of the debtor, including the applicants, applied to set aside the SAHC ex parte RO. The creditor banks, including the applicants herein, had provided evidence to the court that the debtor had failed to declare his assets as was required under the then Bankruptcy Act 1967 and had in fact dissipated some assets after the SAHC ex parte RO had been obtained. See the summon in chambers filed by the creditor banks including the applicants herein dated 4 March 2016, the affidavit in support affirmed on 2 March 2016, the debtor's affidavit in reply affirmed on 24 March 2016, the affidavit in reply affirmed on 7 April 2016, the debtor's second affidavit in reply affirmed on 22 April 2016, the affidavit in reply (2) affirmed on 19 May 2016, the debtor's third and fourth affidavits in reply affirmed on 26 May 2016 and 27 May 2016, the supplemental affidavit affirmed on 30 May 2016 and the order dated 17 May 2017 — exh MIBB7, at pp 183–348, encl 6.

[22] On 14 March 2016, the debtor filed his second application to set aside the CP ('the debtor's second application to set aside CP') in MIBB's bankruptcy action, which was withdrawn on 21 September 2016.

[23] In May 2017, Messrs S Ravenesan took over the conduct of the matter for the debtor, relating to the debtor's petition and the SAHC ex parte RO from Messrs Faizul Nasir & Associates.

[24] On 17 May 2017, the SAHC ex parte RO was ordered to be set aside and the debtor was found by the High Court judge to be guilty of contempt of court. See the grounds of judgments in respect of the orders dated 17 May 2017 and 8 June 2017 — exh MIBB8, at pp 350–365, of the affidavit in support of the first applicant at encl 7 ('encl 7')/Annexure 3 hereto.

[25] The debtor appealed against the said order of 17 May 2017 vide Civil Appeal No B-03(IM)(NCC)-37–05 of 2017 ('the setting aside of RO appeal') and also filed an application in the Shah Alam High Court for, inter alia, a stay of the order of 17 May 2017 pending the disposal of the setting aside of RO appeal.

[26] On 8 June 2017, the debtor's stay application was dismissed with costs and the debtor was ordered to pay a fine of RM50,000 in relation to the court's finding that he was in contempt of court. The debtor is also appealing this decision.

THE SAHC BANKRUPTCY APPEALS

[27] In addition to his appeal against the setting aside of the RO, the debtor also appealed against both aforesaid orders of 8 June 2017 to the Court of Appeal vide Civil Appeal No B-03(IM)(NCC)-54–07 of 2017 ('the RO stay appeal') and Civil Appeal No B-03(IM)(NCC)-55–07 of 2017 ('the committal order appeal'). The five creditor banks, including the applicants, had also filed their cross-appeal in the committal order appeal. See the notices of appeal filed in respect of the setting aside of RO appeal, the RO stay appeal, the committal order appeal and the notice of cross-appeal — exh MIBB10, at pp 370–391, encl 7.

[28] The debtor's aforesaid appeals ('the SAHC bankruptcy appeals') were initially fixed for hearing on 3 May 2018, but had been adjourned and are now fixed for hearing on 28 July 2020. See the debtor's solicitors' letters dated 1 April 2019, 27 August 2019, 23 December 2019, the Court of Appeal's letters dated 29 August 2018, 4 April 2019, 24 December 2019 and the applicants' solicitors' letters dated 3 April 2019, 27 August 2019 — exh MIBB11, at pp 392–407, encl 7.

[29] On 13 June 2017, however, the debtor filed a second application for a stay of the proceedings under MIBB's bankruptcy action ('the debtor's second stay application') pending the disposal of the appeals filed in respect of the 2015 judgment in the Federal Court which the registrar allowed on 9 November 2017. The stay order of 9 November 2017 eventually lapsed upon the dismissal of the said appeals by the Federal Court on 15 March 2018.

THE DEBTOR'S THIRD APPLICATION FOR THE SETTING ASIDE OF CP

[30] On 30 March 2018, just four days before the hearing date of 4 April 2018 of the creditor's petition in the MIBB's bankruptcy action, the debtor filed his third application for the setting aside of the creditor's petition ('the debtor's third application for the setting aside of CP').

[31] On 24 May 2018, the registrar allowed the debtor's third application for the setting aside of CP but no grounds were furnished by the registrar and the first applicant appealed to the judge in chambers on 24 May 2018. See the summons in chambers dated 30 March 2018, the debtor's affidavit in support affirmed on 30 March 2018, the first proposed intervener's/applicant's affidavit in reply affirmed on 17 April 2018, the debtor's affidavit in reply affirmed on 30 April 2018, the first proposed intervener's/applicant's affidavit in reply affirmed on 14 May 2018 and the order dated 24 May 2018 — exh MIBB12, at pp 408–441, encl 7.

[32] On 26 July 2018, the said appeal was allowed by the judge in chambers and the creditor's petition was reinstated and the hearing for the same fixed for 13 August 2018.

[33] On 27 July 2018, the debtor appealed against the aforesaid decision of 26 July 2018 to the Court of Appeal ('the setting aside of CP appeal') and on 8 August 2018, obtained an order for a stay of the proceedings the creditor's petition pending the disposal of such appeal ('the COA stay order'). See the order dated 26 July 2018, the debtor's notice of appeal dated 27 July 2018 and the order dated 8 August 2018 — exh MIBB13, at pp 442–459, encl 7.

[34] As a result of the COA stay order, the creditor's petition hearing was further adjourned to 31 October 2018. In respect of MIBB's bankruptcy action and the appeals arising therefrom, the debtor was represented by Messrs KY Sim & Co.

[35] On 11 February 2020, the setting aside of CP appeal was heard and such appeal was dismissed with costs by the Court of Appeal. Following the dismissal of the setting aside of CP appeal, the COA stay order lapsed. See the Court of Appeal draft order dated 11 February 2020 — exh MIBB15, at pp 485–487, encl 7.

[36] As a result of the ex parte VA order granted in this proceedings before me, the creditor's petition hearing in MIBB's bankruptcy action on 17 February 2020 was yet again vacated and adjourned to 5 June 2020.

[37] On 27 February 2020, sealed copies of the ex parte VA order were served on the applicants.

DEBTOR'S LEAVE TO APPEAL TO THE FEDERAL COURT

[38] On 11 March 2020, the debtor filed his application for leave to appeal to the Federal Court against the decision of the Court of Appeal on 11 February 2020 on the setting aside of CP appeal (see para 40 above). See the unsealed notice of motion and the affidavit in support affirmed by the debtor on 11 March 2020 — exh MIBB16, at pp 488–518, encl 7.

THE APPLICANTS' APPLICATION

[39] On 17 March 2020, the applicants' application ('encl 5') was filed. The unsealed copy of the applicants' application and the applicants' affidavits in support were served on the counsel for the debtor by way of email on 17 March 2020. Due to the Movement Control Order imposed by the Government of

Malaysia, the sealed copy of the applicants' application was served on the counsel for the debtor by way of email on 2 April 2020.

APPLICANTS SUBMISSIONS

[40] The applicants allege amongst others that the debtor had attempted to stall the proceedings of MIBB's bankruptcy action and contends that whilst the litigation concerning the 2015 judgment as aforesaid were ongoing, the debtor had managed to delay MIBB's bankruptcy action against him, as set out in the chronology of events in respect of the proceedings, various applications and appeals filed by the debtor to stall the proceedings in MIBB's bankruptcy action:

5 May 2015	:	the debtor's application to set aside the bankruptcy notice.
8 July 2015	:	dismissal of the debtor's aforesaid application by the registrar.
15 July 2015	:	the debtor filed its appeal against the registrar decision of 8 July 2015 to the judge in chambers.
21 July 2015	:	the creditor's petition was presented against the debtor. The creditor's petition was initially fixed for hearing on 28 September 2015.
30 July 2015	:	the debtor applied for a stay of MIBB's bankruptcy action pending the disposal of the SPA action ('the debtor's first stay application').
6 November 2015	:	the debtor's appeal to the judge in chambers in respect of his application to set aside the bankruptcy notice was dismissed with costs by the judge.
24 October 2015	:	the debtor's appeal against the said decision of 6 November 2015 was dismissed with costs by the Court of Appeal.
30 December 2015	:	the debtor filed his application to set aside the creditor's petition ('the debtor's first application to set aside CP').

[41] The applicants submit that in the MIBB's bankruptcy action, the debtor had always maintained that he is able to pay his debts.

[42] It was further contended by the applicants that knowing full well that MIBB's bankruptcy action was ongoing in Kuala Lumpur and despite having filed his first application to set aside the creditor's petition on 30 December 2015, the debtor proceeded to file the debtor's petition in the Shah Alam High Court which was not made known to any of his bank creditors including the applicants.

[43] The applicants further state that in the SAHC ex parte RO was obtained on the debtor's representation to the court that he needed protection of the Bankruptcy Court in order for him to propose a scheme of arrangement of his debts for his creditors' consideration. A

[44] It is further contended by the applicants that contrary to the debtor's own sworn statements, the debtor was and still is, able to appoint various firms of solicitors and senior counsel such as Dato' Seri Gopal Sri Ram, Dato' Malik Imtiaz Sarwar and Dato' Wong Rhen Yen to represent him in various proceedings filed in the High Court and the appellate courts in connection with the aforesaid suits. B C

[45] It is also alleged by the applicants that the SAHC bankruptcy appeals were initially fixed for hearing on 3 May 2018, but had been adjourned seven times, where five out of the seven adjournments were granted as a result of the debtor's or his counsel's requests. D

[46] The applicants submit that with the setting aside of the SAHC ex parte RO, MIBB's bankruptcy action could finally continue. Since the bankruptcy notice was filed therein on 31 March 2015, MIBB's bankruptcy action has been repeatedly delayed. E

[47] It was further alleged by the applicants that as a result of the COA stay order, as mentioned above, the creditor's petition hearing was further adjourned to 31 October 2018 and that the creditor's petition hearing date had to be vacated repeatedly due to the many adjournments of the hearing of the setting aside of CP appeal, at the debtor's or his solicitors' requests. F

[48] The applicants contend that there has been undue delay in pursuing the debtor's setting aside of CP appeal was initially fixed for hearing on 26 October 2018 but had been adjourned four times, where three out of the four adjournments were granted as a result of the debtor's or his counsel's requests and once by the Court of Appeal itself and referred to the debtor's solicitors' letters dated 17 October 2018, 7 November 2018, 12 July 2019, 29 January 2020, the first proposed intervener's/applicant's solicitors' letters dated 19 October 2018, 12 November 2018, 15 July 2019, and the Court of Appeal's letter dated 7 January 2019, 22 July 2019, 4 February 2020, 29 January 2020 — exh MIBB14, at pp 460–484, encl 7, as proof thereto. G H

[49] It is submitted by the applicants that the debtor continues to incur liabilities even after the making of the ex parte VA order. I

[50] The applicants contend that the court has the powers to grant an order as prayed for in prayer (3) of encl 5 to set aside the ex parte VA order and relied on the provisions in s 91(1) of the IA and also O 92 r 4 of the Rules of Court 2012 ('the ROC').

[51] It is submitted by the applicants that the VA application is a sham and an abuse of process of the Insolvency Act provisions and of the court's process and which thus warrants the granting of the order as prayed for in prayer (3) of the applicants' application. It was further contended that this court would not have granted the ex parte VA order if there had been disclosure of all the facts above.

[52] The applicants also submit that VA application was filed with a mala fide intent to not only stall the hearing of the creditor's petition in MIBB's bankruptcy action on 17 February 2020 but also to prejudice the applicants' rights under several litigation actions.

[53] It is contended by the applicants that the debtor is precluded from filing the VA application as a 'voluntary arrangement' under s 2 of the IA means a composition in satisfaction of a debtor's debt or a scheme of arrangement of a debtor's affairs, whilst the ex parte VA order was obtained by the debtor purportedly for him to propose a voluntary arrangement to his creditors, and Mr Baltasar bin Maskor, was appointed as his nominee ('the nominee'). The nominee was appointed to act in relation to the voluntary arrangement and for the purpose of supervising the implementation of the voluntary arrangement.

[54] The applicants then proceeded to highlight to this court that when the debtor filed his debtor's petition in the Shah Alam High Court and obtained the SAHC ex parte RO, this was also on the similar pretext that a scheme of arrangement would be proposed to the debtor's creditors for their consideration, which when the Shah Alam High Court was apprised of the facts of the matter and the conduct of the debtor, the SAHC ex parte RO was set aside.

[55] It was also submitted by the applicants that the SAHC RO proceedings were filed by the debtor for the purpose of formulating a scheme of arrangement for his creditors' consideration, which is of a similar nature to the voluntary arrangement proceedings herein and that one of the arguments raised by the debtor's counsel in the SAHC RO proceedings was that the SAHC ex parte RO cannot be set aside when there was no application made for the setting aside of the debtor's petition.

[56] Accordingly it was argued by the applicants here that based on the position taken by debtor in the Shah Alam High Court and because the debtor

is still maintaining his setting aside of RO appeal, the debtor obviously needs to keep the debtor's petition afoot and that not only was this VA application defective by virtue of s 2D(2)(a) of the IA, as the debtor's petition is still subsisting, but there is clearly a duplicity of proceedings in that the debtor is maintaining two actions for restructuring his debts. On this ground alone it was argued, the ex parte VA order ought to be be set aside.

[57] There is, as further contended by the applicants, a deliberate failure and non disclosure on the part of the debtor in disclosing to this court when the VA application was made, all the material facts concerning his debtor's petition and the SAHC bankruptcy appeals, in particular the setting aside of RO appeal, which are still pending before the Court of Appeal as well as deliberately failing to disclose to this court the various proceedings which he had filed to thwart MIBB's bankruptcy action prior to the filing of the VA application since the creditor's petition was filed on 21 July 2015, more than five years ago. Also omitted were the facts concerning the ongoing litigation actions between the debtor and the applicants.

[58] It was also alleged that the debtor has an obligation not to mislead this court and had by his false statements sworn in his supporting affidavit (more so in an ex parte application) made false statements on oath in his affidavit in support of the VA application affirmed by him on 13 February 2020 in encl 2 ('the debtor's affidavit'), which included the following:

(a) in para 5 of the debtor's affidavit, the debtor had set out the various proceedings which were made against him;

(b) however, the action set out in para 5(ii) of the debtor's affidavit is an action filed by the debtor himself in the Kuala Lumpur High Court vide Originating Summons No WA-24–3–02 of 2019. Such action was filed against the applicants (and two other banks), for various declaratory reliefs to have declared null and void the Federal Court's decision of 15 March 2018 under Civil Appeal Nos 02(f)-49–05 of 2017(W) and 02(f)-50–05 of 2017(W) (in which the debtor is an appellant therein) and reference was made to the debtor's originating summons and his supporting affidavit both dated 22 February 2019 at exh MIBB18, encl 7; and

(c) similarly, in paras 5(vi), (vii), (viii) of the debtor's affidavit, these are the appeals which were filed by the debtor himself arising out of the SAHC bankruptcy appeals (as stated in paras 28 to 29 above).

[59] It was alleged that the facts concerning the ongoing litigation actions between the debtor and the applicants as listed in para 94 below were omitted.

The ex parte VA order which was obtained by the debtor based on his false statements sworn on oath in his supporting affidavit, ought to be set aside, and the debtor ought not to be given the protection of the court under the Insolvency Act 1967.

[60] The applicants further submit that the voluntary arrangement proceedings are now spent and ought to be set aside as the proceedings for a voluntary arrangement ('the VA proceedings') as the nominee has failed to call for a meeting within the prescribed statutory time r 12 of the Insolvency (Voluntary Arrangement) Rules 2017 ('the IVAR'), since the debtor's proposal which was prepared on 17 March 2020 ('debtor's proposal') and the nominee ought to have called the creditors' meeting under s 2I of the IA (Tab 1, ABA), within 14 days from 17 March 2020 (ie by 31 March 2020) as required by r 12 of the IVAR, and thus any decision made at such creditors' meetings is liable to be set aside, *in limine*, as any decision made or voluntary arrangement approved at such defective meeting, would be void.

[61] It is submitted that the debtor's proposal is mala fide/sham and inherently unworkable and/or causes irreparable damage to applicants and that the proposal is nonsensical.

[62] The applicants had explained by way of background, that:

(a) the debtor was the managing director and is a shareholder of Gula Perak Bhd ('Gula Perak') who had issued the notes which were subscribed for at face/full value by various parties including the applicants. The applicants had purchased these notes at face value and on maturity date, Gula Perak would have to repay the face value of the notes, with payments of interest in the interim to the noteholders. Gula Perak had defaulted in repayment of the monies due to noteholders of the notes which led to litigation spanning ten years involving various parties, including the debtor and his nominees/associated persons with various noteholder banks including the applicants;

(b) the notes are secured by land charges/assignments of land given to Universal Trustees Bhd ('the trustee') who holds the same as trustee for the noteholders. The notes are owned by the noteholders, ie, the notes in the name of the applicants are owned by the applicants. Similarly, the debtor himself has listed notes owned by him as his assets (see list of shareholdings (non-listed) in debtors' statement of affairs — (at p 49 of the first applicant's supplemental affidavit, encl 23);

(c) where Gula Perak has failed to pay the face value of the notes, with the accrued interest payable, the applicants were therefore now looking at realisation of the land security to recover monies due to the applicants

under the notes owned by the applicants. The debtor and his related companies have been opposing such efforts to realise the security;

(d) the charge actions filed in respect of the lands charged as security for repayment under the notes being are as at exh MIBB2 of the first creditor's further affidavit being:

(i) Shah Alam High Court Originating Summons No 24FC-119–02 of 2014 (Application for Execution No 38–417–05 of 2015) (at pp 93–98, 128–133, 153–156, 172–189);

(ii) Shah Alam High Court Originating Summons No 24FC-345–11 of 2011 (Application for Execution No 38–393–03 of 2013) (at pp 88–92, 141–146);

(iii) Kuala Lumpur High Court Originating Summons No 24NCvC-2980–11 of 2011 (Application for Execution No 38–808–10 of 2013) (at pp 113–118, 147–152);

(iv) Kuala Lumpur High Court Originating Summons No WA-24FC-1230–12 of 2016 (Application for Execution No 38–80–02 of 2017) (at pp 74–80, 162–166); and

(v) Kuala Lumpur High Court Originating Summons No WA-24FC-868–12 of 2013 (Application for Execution No 38–188–03 of 2015) (at pp 105–108, 190–195).

Being the orders for sale and the initial orders for directions respectively (with reserve prices totalling approximately RM435m, collectively).

(e) by the 'proposal' prepared by the nominee/debtor it is clear that with the support of his friendly creditors (whose doubtful debts the applicants have challenged in their affidavits of 17 March 2020 in encls 6 and 8), the debtor is using the VA provisions to force the applicants to sell their notes to the debtor's nominee Infragem Sdn Bhd, who are allegedly the proposed 'white knight' who would purchase the redeemable convertible secured notes issued by one Gula Perak Bhd ('the notes') and owned by the applicants, at a discounted price, and that the notes would then be transferred to the other creditors of the debtor as full and final settlement of the debtor's debts at a discounted price, thus depriving the applicants of their asset and their rights to full payment from the realisation of the lands charged as security for the notes; and

(f) there was in fact an offer made by Infragem Sdn Bhd to the applicants for the purchase of their notes but that was rejected by the applicants and that this was clearly a backdoor way to compel the applicants to sell their notes to Infragem Sdn Bhd, the debtor's nominee.

[63] It was further submitted that the proposal is clearly not genuine or

sensible as the notes are owned by the applicants and are not security for any debt owing by the debtor. It is a ridiculous proposal for the debtor to bring in a friendly company to compel the applicants, as creditors, to sell their assets at a discounted price. There cannot be a transfer of ownership of a creditor's asset by a debtor's voluntary arrangement.

[64] It was also submitted by the applicants that in restructuring proposals, the debtor proposes a sale of his properties, but in the VA herein, the debtor is proposing a sale of his creditors' assets despite setting out in his statement of affairs dated 27 February 2020 his purported list of assets which he is not proposing to sell to settle his debts at all. In effect, the nominee/debtor is making the applicants pay for the debts of the debtor.

[65] The applicants submits that the entire exercise under the voluntary arrangement proceedings filed by the debtor is to ensure that the applicants lose control and possession of their notes, and that the motive of the debtor is clear, that is to force the applicants to relinquish the notes and thereby compromising the applicants' rights and positions in the following litigation involving the applicants, the debtor and/or his nominee companies, as follows:

(a) Kuala Lumpur High Court Originating. Summons No WA-24NCC-142–03 of 2020. *Maybank Investment Bank Bhd & Malayan Banking Bhd v Lim Cheng Pow, Million Westlink Sdn Bhd, Pavillion Yields Sdn Bhd, Greenpower Value Sdn Bhd, Best Birdsnest Sdn Bhd and Universal Trustee (M) Bhd*;

(b) Kuala Lumpur High Court. Originating Summons No WA-24–3–02 of 2019. *Million Westlink Sdn Bhd & Lim Cheng Pow v Maybank Investment Bank Bhd, Malayan Banking Bhd & 2 Ors*;

(c) Court of Appeal. Civil Appeal Nos B-03(IM)(NCC)-37–05 of 2017, B-03(IM)(NCC)-54–07 of 2017 and B-03(IM)(NCC)-55–07 of 2017. *Lim Cheng Pow v Maybank Investment Bank Bhd, Malayan Banking Bhd & 3 Ors*;

(d) Kuala Lumpur High Court. Originating Summons No 24NCC-134–04 of 2014. *Greenpower Value Sdn Bhd v Universal Trustee (M) Bhd, Pavilion Yields Sdn Bhd, Maybank Investment Bank Bhd, Malayan Banking Bhd & 3 Ors*;

(e) Kuala Lumpur High Court. Bankruptcy No 29NCC-1816–03 of 2015. *Maybank Investment Bank Bhd v Lim Cheng Pow*;

(f) Federal Court. Civil application No 08(f)-89–03 of 2020(W) (Court of Appeal. Civil Appeal No W-03(IM)(NCC)-88–08 of 2018). *Lim Cheng Pow v Maybank Investment Bank Bhd*;

(g) Shah Alam High Court. Companies Winding Up No

BA-28NCC-276–06 of 2018. *Maybank Investment Bank Bhd v Million Westlink Sdn Bhd*;

(h) Shah Alam High Court. Originating Summons No BA-28JM-2–03 of 2019. *Million Westlink Sdn Bhd; Maybank Investment Bank Bhd, Malayan Banking Bhd and 2 Ors (proposed interveners/applicants)*; and

(i) Court of Appeal. Civil Appeal No B-02(IM)-1590–08 of 2019. *Maybank Investment Bank Bhd, Malayan Banking Bhd and 2 Ors v Million Westlink Sdn Bhd* where in all the above proceedings involve the applicants as holders of their notes and if the proposal is passed and approved by the debtor's friendly and sham creditors, this would affect the status of the applicants as holders of the notes and would in turn affect the applicants rights in respect of the aforesaid proceedings and bind the applicants, who would lose control of their notes.

[66] The applicant contends that the notes are not owned by the debtor, nor by Million Westlink Sdn Bhd, which was the entity for whom the debtor stood as guarantor which led to the judgement of 5 October 2015 obtained by the applicants and that the court ought not to allow the debtor to proceed with his purported restructuring, by acquiring the assets of the applicants at a discounted price and unjustly enriching the debtor and his nominees/friendly creditors.

[67] In support of their above contention, the applicants stated that as the provisions under the Insolvency Act 1967 relating to the VA proceedings are fairly new, they would be relying on the decisions in cases relating to s 176 of the Companies Act 1965, a rescue mechanism made available to ailing companies, to draw an analogy and referred to s 176 of the Companies Act 1965 ('the CA 1965'), and the case law authorities of *Sri Hartamas Development Sdn Bhd v MBf Finance Bhd* , *Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & Ors (No 2)* [1993] 2 MLJ 353; [1993] 2 CLJ 677 (d) Court of Appeal, *PECD Bhd & Anor v Am Trustee Bhd and other appeals* [2010] 5 MLJ 357.

[68] The applicants also contend that there are doubtful 'creditors' which can be found at in the debtor's affidavit in encl 2 wherein the debtor has prepared a purported list of his creditors marked as exh LCP3 and also the debtor's statement of affairs dated 27 February 2020, which may cause irreparable damage to the applicants as the sums allegedly owing to some persons whom the debtor claims to be his creditors ('the impugned debts') appear to have been concocted and/or inflated significantly and sets out below a comparison of the impugned debts based on the debtor's statement of affairs dated 29 January 2016 filed in respect of the SAHC ex parte RO (marked as exh MIBB4) ('the statement of affairs'):

No	Creditor	Sums due (RM) (as stated in the statement of affairs dated 29 January 2016 — marked as exh MIBB4)	Sums due (RM) (as stated in the VA application — exh LCP1)
1.	Town Hang	127,174,116.25	234,186,223.14
2.	Liu Chin-Hung	25,648,160.32	55,016,437.85

[69] It is thus alleged by the applicants that the impugned debts have been increased to dilute the voting power of the applicants should the VA order be implemented as by s 2I(3) of the IA the proposal has to be passed by a special resolution which is defined as 'a resolution decided by a majority in number and at least three-fourths in value of the creditors present personally or by proxy at a meeting of creditors, or in writing, and voting on the resolution'; thus to ensure the proposal is approved, the debtor requires at least 75% of the creditors to vote for the same where in the debtor's statement of affairs, (at p 49 of the first applicant's supplemental affidavit, encl 23), if one totals the amount of notes owned by the applicants (Alliance Bank's portion has been purchased by MIBB), the total notes owned by the applicants come up to just over 24% wherein the sudden inexplicable jump in amounts due to the purported other 'creditors' of the debtoris to ensure the applicants do not get at least 25% of the votes.

[70] It is further stated by the applicants that the two biggest purported creditors of the debtor are Town Hang Securities Co Ltd and Liu Chin-Hong who are foreigners and if the meeting is allowed to proceed, voted on and monies are paid out from the sale of the notes to these two creditors, it would cause serious and irreparable damage to the applicants as the applicants would be caught in further litigation to recover such monies as there is no certainty that the applicants would be able to recover such losses from these creditors, the nominee and/or the debtor.

[71] The applicant then contends that of immense damage to the applicants would be that they would lose control and possession of the notes which would adversely affect their rights in all the litigation set out above involving the debtor, Gula Perak and all the companies which had provided security for the notes, which tantamounts to compelling evidence that the application for the voluntary arrangement filed herein by the debtor is frivolous, vexatious, and constitutes an abuse of the process of the court as well as of the Insolvency Act, and that the ex parte VA order ought to be set aside.

[72] Next, the applicants submit that the applicants ought to be granted leave to proceed and continue with the proceedings commenced against the

debtor in the Kuala Lumpur High Court vide Originating Summons No WA-24NCC-142–03 of 2020 ('the applicants' OS') and refers to the applicants' OS and the applicants' supporting affidavits at exh MIBB17, encl 7, which is an action seeking for the court to determine the voting rights of the debtor and parties connected to him in respect of the notes held by them.

[73] Finally, the applicants submit that based on the aforesaid matters and having regard to the mala fide conduct of the debtor, the applicants are compelled to seek an order that any fresh application and/or proceedings filed pursuant to the provisions of the IA which may be filed by the debtor, Lim Cheng Pow, must be served on the applicants, prior to any hearing or case management date fixed, to prevent the applicants from being taken by surprise, again.

[74] Premised on the aforesaid matters, the applicants' humbly pray for an order in terms of prayers (2), (3), and (5) of the applicants' application in encl 5, with costs.

DEBTORS SUBMISSIONS

[75] It is submitted by the debtor that:

(a) pursuant to s 2D(3) Insolvency Act 1967, an interim order shall be valid for 90 days and shall not be extended;

(b) under s 2I(1) of the IA, the nominee shall summon a meeting before the expiry of the IO. Hence, the IO which was granted on 14 February 2020, will lapse on 13 May 2020;

(c) the ex parte order in particular prayer (b) granted on 27 April 2020 basically impedes the duty of the nominee;

(d) it will also prejudice the rights of the debtor as the interim order ie the ex parte VA order herein will lapse. The hearing of the creditor's petition against the debtor has been fixed on 5 June 2020 to be heard by Kuala Lumpur High Court vide Bankruptcy No 29NCC-1816–03 of 2015;

(e) till to-date, the interveners have not set aside the ex parte VA order. With the greatest of respect, prayer (b) cannot and should be allowed to stand; and

(f) the debtor submits that that legally, the only avenue will be for this Honourable court to set aside the ex parte order (prayer b) and to allow the meeting of the creditors to consider the voluntary arrangement proposal to go on.

[76] It is further submitted by the debtor that the interveners are not without

any remedy as they can challenge the result of the meeting under s 2L of the IA within 30 days after the decision of the meeting is reported to the court and that this court has wide powers under s 2L(2) including directing a fresh meeting and extending the IO for another 30 days. Thus for all intents and purposes, there is no prejudice to the interveners.

[77] On the complaint by the interveners that the ex parte VA order is spent due to the delay in the nominee summoning the meeting, the debtor states that the duty to summon the meeting is on the nominee and that r 9 of the Insolvency (Voluntary Arrangement) Rules 2017 ('the IVAR') provides that the debtor shall submit a statement of affairs to the nominee within 14 days after the ex parte VA order, whilst r 11 of the IVAR states that the nominee shall prepare the debtor's proposal within 21 days after the receipt of the statement of affairs and that r 12 of the IVAR states after the debtor's proposal has been prepared, the nominee shall summon a meeting within 14 days.

[78] The debtor then sets out the chronology of events:

(a)	14 February 2020	—	the ex parte VA order was granted;
(b)	27 February 2020	—	the statement of affairs was submitted to the nominee by the debtor;
(c)	17 March 2020	—	the nominee prepared the debtor's proposal;
(d)	18 March 2020	—	the MCO took place;
(e)	15 April 2020	—	the nominee issued a notice of meeting of creditors to be held on 29 April 2020; and
(f)	27 April 2020	—	the interveners obtained an ex parte order staying the meeting of creditors.

From the above events, the debtor submits that it is a mere irregularity which occurred because of the MCO period. The nominee ought to have summoned for a meeting of creditors latest by 31 March 2020.

[79] In any event, the debtor contends that there is a conflict between s 2I(1) of the IA and r 12 of the IVAR as the former section states that the nominee shall summon a meeting of creditors before the expiry of the ex parte VA order, and that it is accepted law of interpretation that in the event there is a conflict between the principal Act and the rules which are subsidiary legislation, the former should prevail and quotes s 23 of the Interpretation Acts 1948 and 1967 and *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385 (FC).

[80] The debtor thus states that he should not be punished as any breach was not caused by him and that there is also a saving provision under s 2L(7) of the IA which will not invalidate any approval given at a meeting of creditors by

reason of any irregularity unless the court determines otherwise. A

[81] In the premises, the debtor prays that prayer (b) of the ex parte order dated 27 April 2020 be discharged and/or set aside with costs.

COURT'S FINDINGS B

[82] This court would firstly like to thank all counsels for their assistance in this matter. It has not been easy to come to a decision herein as this court has had to balance interest of a debtors protection under a voluntary arrangement and that of a creditors rights and interest. C

[83] I had on the 12 May 2020 given my brief grounds for this matter and I now herewith state my full grounds of my decision as mentioned henceforth. D

[84] In coming to its decision this court has evaluated s 2 of the IA 1967 as well as the provisions of s 91(1) of the IA 1967 and after considering the various submissions of the respective parties, I hold that s 2 of the IA is subject to the requirement of full and frank disclosure as the same is applied for via an ex parte application. I hold that there is no hard and fast rule as to the degree of disclosure required which will depend in each case on the particular facts and circumstances of that case, buta mere 'mechanical/perfunctory' compliance of the said s 2 is, with respect, in the view of this court insufficient as there has to be sufficient material disclosure of facts for which the court has to be appraised of in order to decide whether to grant the ex parte order. E F

[85] See cases on the requirement for a full and frank disclosure on affidavits in an ex parte applications in *Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd and another suit* [2019] 8 MLJ 473; [2018] 10 CLJ 412, where Her Ladyship Wong Chee Lin JC (as she then was) had stated 'It is trite law that in an ex parte application, the applicant has a duty to the court to make full and frank disclosure of all material fact'. G

[86] This principle can also be found in the Court of Appeal judgment of *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 where the Court of Appeal in a judgment read by Richard Malanjum JCA (as he then was) stated that 'It is trite law that in any ex parte application it is essential that there must be frank and fair disclosure of all relevant materials including points that may be unfavourable to an applicant'. In *Siporex Trade SA v Comdel Commodities Ltd* [1986] 2 Lloyd's Rep 428 his Lordship Bingham J (as he then was) said this at p 437: H I

Failure to make full and fair disclosure

A The scope of the duty of disclosure of a party applying ex parte for injunctive relief is, in broad terms, agreed between the parties. Such an applicant must show the utmost good faith and disclose his case fully and fairly. He must, for the protection and information of the defendant, summarize his case and the evidence in support of it by an affidavit or affidavits sworn before or immediately after the application. B He must identify the crucial points for and against the application, and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the judge in deciding whether to grant the application. It is no excuse for an applicant to say that he was not aware C of the importance of matters he has omitted to state. If the duty of full and fair disclosure is not observed, the court may discharge the injunction even if after full enquiry, the view is taken that the order made was just and convenient and would probably have been made even if there had been full disclosure. Most of these principles are established by authorities such as *R v Kensington Income Tax General* D *Comrs, ex p Princess de Polignac* [1917] 1 KB 486; *Thermax Ltd v Schott Industrial Glass Ltd* [1981] FSR 289; *Wardle Fabrics Ltd v G Myristis Ltd* [1984] FSR 263; *Bank Mellat v Nikpour* [1985] FSR 87. *The other principles have not been the subject of detailed challenge.*

E (See also *Lim Sung Huak & Ors v Sykt Pemaju Tanah Tikam Batu Sdn Bhd* [1993] 3 MLJ 527; [1994] 1 CLJ 264 where KC Vohrah J (as he then was) made reference to the forgoing case).

[87] As to s 91(1) of the IA 67 which reads '(1) Subject to this act, the court, F under its jurisdiction in bankruptcy, shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case'. G

The Court of Appeal in *United Overseas Bank (M) Bhd v Loke Lai Ying* [2003] 3 MLJ 201 at pp 205 and 206, has held 'The emphasis of the section (s 91(1)) is on deciding all questions, whether of fact or of law. It tells the judge that to do complete justice he has full power to decide all questions and he should H exercise the power if necessary. Do not leave any question undecided, if by not deciding it complete justice will not be done. Do not leave any stone unturned in the pursuit of complete justice ... If in the interest of doing justice a question is decided and decided in favourof a party, the consequence of the decision ought to be given effect to'.

I

[88] In another case in the Court of Appeal being, *Sibu Slipway Sdn Bhd v Yii Chee Ming & Ors and other appeals* [2017] 1 MLJ 368 at pp 375–379 the Court of Appeal held that the court retains an inherent jurisdiction to intervene and set right or remedy the wrong that had occurred, ie an winding

up proceedings, notwithstanding the lack of an express provision in the Act.

[89] Based on the said s 91(1) of the IA 67 and the above authorities cited of which I am bound by, I do hold *that* this court has the inherent jurisdiction and the power to decide on all questions whatsoever herein and that this court will exercise the power herein to do justice.

[90] That being said, I find that there is an element of a lack of bona fides on the part of the debtor in having to failed to disclose to this court, the full facts in its application under s 2 of the IA pertaining to amongst others and in particular to satisfactorily explain the debtors petition in the SAHC as well as the proceedings arising thereto and the SAHC bankruptcy appeals, in particular the setting aside of receiving order appeal, which are still pending before the Court of Appeal and how it got into the situation it was in. I also find that the debtor had failed to explain the salient facts concerning the ongoing litigation actions between the debtor and the applicants and that the history of litigation would have been a relevant factor in the current proceedings for which the court should have been made known of. In the circumstances, this court holds that the debtor cannot now seek the aid of this court where there has been a failure to make a full and frank disclosure.

[91] I also find that s 2D(2)(a) of the IA, which states:

> (2) Before the making of an interim order under subsection (1), the court shall satisfy itself that:
>
> (a) during the period of twelve months immediately preceding the date of the filing of such application, no previous application has been filed by the debtor;

may have not been complied with as the debtor's petition is still subsisting vis a vis the debtor's RO appeal to the Court of Appeal thereto, and that there may then be the possibility of aduplicity of proceedings by virtue of the debtor maintaining two actions for restructuring his debts. As to this I have taken into account the debtor's contention that his appeal against the setting aside debtors petition at the Shah Alam High Court is totally on a different regime from the VA herein, being the Bankruptcy Act 1967, but this court holds that the phrase 'previous application' in s 2D(2)(a) of the IA must therefore be construed to include any previous application of a similar nature. I further find that there are similarities in the VA application herein and the debtor's petition both of which will have a similar effect of restructuring the debtor's debts and which should have been disclosed to this court as a result thereof.

[92] On this score, the ex parte order the decision of this court in granting the ex parte order may well have been different had the debtor fully disclosed the circumstances pertaining to his debtor's petition.

[93] This court also finds that there has been a failure by the nominee to comply with r 11 of the Insolvency (Voluntary Arrangement) Rules 2017 in that the debtors proposal must be called upon within 21 days after receiving the statement of affairs from the debtor. The said r 11 reads 'The nominee shall prepare the debtor's proposal in Form 9 within twenty-one days after receiving statement of affairs' of which I hold that means that the requirement of the debtor's proposal via Form 9 has to be made within the 21 day period after receiving the statement of affairs and that the same is a mandatory requirement by the use of the word 'shall' in r 11 therein. See the Court of Appeal decision of *Azman bin Jufri v Medtronic Australasia Pty Ltd* [2015] 6 MLJ 841 at p 855; [2015] 5 CLJ 1026 at pp 1040–1041, at para [38] wherein, the provision in question was r 18(1) of the Insolvency Rules which provides that the mode of an application 'shall' be by way of a summons in chambers and the application for substituted service filed by way of a notice of application was found to be defective. The Court of Appeal held that the breach of the said r 18 is not just a mere irregularity capable of being cured in face of the word 'shall'.

[94] This court holds that there must be meticulous compliance with the law more so when the interim order under s 2 of the Insolvency Act 1967 is only valid for a very limited time of 90 days from the date the order is made and such period shall not be extended pursuant to s 2D(3) of the IA 1967. I thus agree with the applicants counsel that the CA proceedings herein is now spent as the nominee has failed to call for a meeting within the prescribed statutory time.

[95] I also hold that this court has by virtue of s 91(1) of the IA the full power at this summary stage to decide on the proposal made vide the debtors' solicitors' letter dated 16 April 2020. For this, as previously mentioned above, I have been referred to by the applicant's solicitor to a case which related to the previous s 176 of the Companies Act 1965, which was a rescue mechanism made available to ailing companies, to draw an analogy.

[96] Under the previous s 176 of the Companies Act 1965 ('the CA 1965') a compromise or arrangement may be proposed between the company and its creditors, and where such compromise or arrangement is approved at a creditors' meeting, the court shall ratify the same through a court order. The said case I was referred to was *Sri Hartamas Development Sdn Bhd v MBf Finance Bhd* [1990] 2 MLJ 31 at pp 31–33, 35 and 36, Siti Norma J (as she then was) held that the court is empowered to evaluate and consider whether the proposed scheme under s 176 of the CA 1965 was reasonable and fair so as to benefit all creditors based on the information disclosed in the proposed scheme, and thereby exercising its discretion to order for a creditors' meeting or to refuse to make an order for a creditors' meeting to vote on the same. It was also held that the creditors of the company may raise objections to the proposed scheme at a summary stage, ie before the creditors' meeting was held,

rather than to allow matters to proceed further. The order made ex parte for the creditors meeting to be convened was set aside.

[97] After a careful examination of the said *Sri Hartamas Development Sdn Bhd v MBf Finance Bhd*, this court is inclined to follow the principle found in the said case, ie that the court was empowered to consider at this stage whether the proposed scheme under the VA was reasonable and fair, as the old s 176 was related to a rescue mechanism as is the current provision under the Insolvency Act 1967 relating to the VA proceedings and I have by analogy accepted and accordingly I do hold that this court has by virtue of s 91(1) of the IA the full power at this summary stage to decide on the proposal made vide the debtors' solicitors' letter dated 16 April 2020

[98] Based on the same and upon perusing the proposal, which has no other option proposed other than the fact that Infragem Development Sdn Bhd has agreed to purchase the notes held by the applicants at a price of RM0.85 sen per unit and that the purchase is to be taken as full and final settlement of the amount owing to the applicants and thereafter allocating the said notes to the other creditors as full and final settlement of their outstanding debts, as well as also after reading the affidavits and scrutinizing the various exhibits thereto of the respective parties herein, I find that the notes of which is being proposed to be purchased by the third party belongs not to the debtor but to the applicants herein, in other words the said notes are the assets of the applicants.

[99] It is in my considered view that it is clear from the facts before me that Infragem Sdn Bhd, the proposed 'white knight' in the debtor's VA, who would purchase the redeemable convertible secured notes issued by one Gula Perak Bhd ('the notes') and owned by the applicants, at a discounted price, and that the notes would then be transferred to the other creditors of the debtor as full and final settlement of the debtor's debts. Gula Perak Bhd ('Gula Perak') who had issued the notes which were subscribed for at face/full value by various parties including the applicants.

[100] From the affidavits, it appears as though the applicants had purchased these notes at face value and on maturity date, Gula Perak would have to repay the face value of the notes, with payments of interest in the interim to the noteholders and that Gula Perak who had defaulted in repayment of the monies due to noteholders of the notes which led to around ten years of litigation involving various parties, including the debtor and his nominees/associated persons with various noteholder banks including the applicants.

[101] I have also noted that the notes are secured by land charges/assignments of land given to Universal Trustees Bhd ('the trustee') who holds the same as

trustee for the noteholders and that the applicants are therefore now looking at realisation of the land security to recover monies due to the applicants under the notes owned by the applicants, of which the debtor and his related companies have been opposing such efforts to realise the security. Accordingly I agree that these notes are owned by the noteholders, ie, the notes in the name of the applicants are owned by the applicants, as submitted by the applicants.

[102] This court further finds that by this 'proposal' prepared by the nominee/debtor, the debtor is using the VA provisions to force the applicants to sell their notes to the Infragem Sdn Bhd at a discounted price, thereby possibly depriving the applicants of their asset and their rights to full payment from the realisation of the lands charged as security for the notes.

[103] I hold that this is thus not merely a case of the proposal not being viable, feasible, workable or intelligible but I find that the proposal is inherently flawed, defective and misguided as the debtor and/or nominee cannot force/compel the applicants to transfer and/or sell the notes which are owned by the applicants as it is incomprehensible to allow the debtor a right to make a proposal for a third party to purchase the notes that does not belong to the debtor but which instead belongs to the applicants. Section 2 of the IA cannot be intended to deprive the applicants herein as a creditor of the debtor of its property.

[104] I also find that the effect of the proposal would compromise the applicants' rights and positions in the other litigation between the applicants and the debtor. Accordingly the court cannot sit idlily to allow such wrong to befall against the applicants and allow an injustice to occur to the applicants by virtue of the proposal and that this court would have come to the same result had the meeting been proceeded with and the applicants thereafter made an application for a review of the meeting's decision under s 2L of the IA 1967 to revoke the proposal. Thus, in the interest of justice it would be more practical and logical not to allow the meeting as the issues with regards the objections to the proposal has already been laid before this court vide encl 5 herein.

[105] I find authority for this in *Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & Ors (No 2)* [1993] 2 MLJ 353; [1993] 2 CLJ 677 in a case allowing the creditors' application to set aside an ex parte order obtained by the company to convene a meeting and to restrain its creditors from commencing proceedings against it, pending the completion of its proposed scheme under s 176 of the CA 1965, Dato' Hj Abdul Malek bin Hj Ahmad J (as he then was) held that:

> ... it was my finding that a proper reading of the proposed scheme, in the light of the arguments of learned counsel for all three secured creditors ... and learned counsel by the applicant, clearly showed that the proposed scheme of arrangement was not

viable, feasible, workable or intelligible. That aside, even if the meeting was allowed to be held, with the same objections canvassed thereat, it would certainly result in the proposed scheme being rejected. It was more logical, therefore, not have the scheduled meeting at all.

[106] I also find that there is a possibility that in the event the creditors meeting is proceeded with, the other creditors of the debtor, who appears to be friendly creditors (whose doubtful debts the applicants have challenged in their affidavits of 17 March 2020 in encls 6 and 8), may out vote the applicants herein and a situation such as in the Court of Appeal decision of *PECD Bhd & Anor v AmTrustee Bhd and other appeals* [2010] 5 MLJ 357 may occur where the court therein had held '[43] The appellants clearly have failed to act bona fide in the second OS proceedings and had abused the provisions of s 176 of the Act and the court process. By obtaining the second RO on an ex parte basis, the appellants had restrained AmTrustee from pursuing its rights under the first appellant's undertaking. If the appellants had then proceeded to the creditors' meeting to vote on this scheme, there was a possibility the other creditors may out vote AmTrustee, as they will be paid from the monies solely due to AmTrustee'.

[107] I have of course in coming to my finding above taken into account the provisions of s 2K(1)(b) of the IA which provides that:

Where the meeting of creditors summoned under section 2I has approved the proposed voluntary arrangement with or without modifications, the approved voluntary arrangement shall:

19 (a) take effect as if made by the debtor at the meeting;

20 (b) bind every person who had notice of and was entitled to vote at the meeting, whether or not he was present or represented at the meeting, as if he were a party to the arrangement.

Thus once the approval for the proposal is passed, this would bind the applicants, who would lose control of their notes.

[108] I have been referred to the following legal provisions by the applicants counsel:

Section 91(1) of the IA which provides that:

91 (1) Subject to this Act, the court, under its jurisdiction in bankruptcy, shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court deems it expedient or necessary to decide for the purpose of doing complete justice ...

Order 92 Rule 4 of the Rules of Court 2012 which provides that: 'For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or

affect the inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court'. (Emphasis added.)

Rule 284 of the Insolvency Rules 2017 provides that:

Rules of Court 2012 applicable in event of lacunae

284 In the absence of any rule regulating any proceeding under the Act or these Rules, the Rules of the court 2012 shall apply, mutatis mutandis

[109] I have considered the abovesaid legal provisions and agree that they are applicable to the matter before me and that this court has the inherent jurisdiction to decide the matter before me based on the said provisions.

[110] Wherefore I hereby grant order in terms for encl 5 prayers 3 and 6 with costs of RM30,000 to be paid by the debtor to the applicants and no order as to costs as against the nominee.

[111] The court accordingly on the aforementioned grounds, further dismissed the nominee's application with no order as to costs.

[112] For the sake of completeness and for the record, the debtor's counsel, Dato Wong Rhen Yen had thereafter applied for an oral stay of the proceedings for which this court after hearing all the respective counsels for the parties herein submit on the same, granted the order for stay subject to a formal stay application being filed within two weeks from the date of this stay order.

Application in encl 5 allowed in part with costs of RM30,000 paid by the debtor to the applicants.

Reported by Mohd Kamarul Anwar